Nos. 168 and 176.
Brf. of Beattie for Mrs. Allen.

Office Supreme Court U. S.
FILED
DEC 31 1898
JAMES H. MCKENNEY,

Filed Dec. 31, 1898.

SUPREME COURT OF THE UNITED STATES.

No. 168.

MRS. BETTIE ALLEN AND W. F. COLLINS,
EXECUTORS, PLAINTIFFS IN ERROR,

versus

OGDEN SMITH, EXECUTOR, ET ALS., DEFENDANTS IN ERROR.

No. 176.

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versus

MRS. BETTIE ALLEN AND W. F. COLLINS,
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[CONSOLIDATED]

BRIEF FOR MRS. BETTIE ALLEN, AS EXECUTRIX, AND INDIVIDUALLY, AND W. F. COLLINS, EXECUTOR, PLAINTIFFS IN ERROR.

CHARLTON R. BEATTIE,
TAYLOR BEATTIE,
Of Counsel.

Thomason, Print., 526 Natchez Street, N. O.

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[CONSOLIDATED]

BRIEF FOR MRS. BETTIE ALLEN, AS EXECUTRIX, AND INDIVIDUALLY, AND W. F. COLLINS, EXECUTOR, PLAINTIFFS IN ERROR.

Richard H. Allen died in the Parish of Lafourche, State of Louisiana, on the 19th of September, 1894, leaving considerable estate and a last will and testament which has been admitted to probate by the proper tribunal.

After a long controversy his estate has been settled as to all of its assets save the distribution of the sum col-

lected by the executors from the United States for the bounty paid upon the sugar produced on the Rienzi Plantation owned by the deceased. This sugar was made, produced and manufactured after his death from cane planted and cultivated on the plantation during his lifetime, but in accordance with the climate and seasons in Louisiana only made into sugar some months after his death.

Under the Act of Congress, known as the McKinley bill, Mr. Allen had complied with the provisions demanded from those making sugar in the United States by applying for a license and giving bond. There is no issue as to this fact.

Previous to his death, that is, on or about the 28th of August, 1894, the Congress repealed the Bounty Act, thus denying to the producers any remuneration in that way.

Under the settled jurisprudence of this Court, this was clearly within the power and authority of the Legislature.

In Salt Co. vs. East Saginaw, 13 Wallace, 379, this Court said:

"Such a law is not a contract except to bestow the promised bounty upon those who earn it, so long as the law remains unrepealed. There is no pledge that it shall not be repealed at any time. In its nature it is a general law regulative of the internal economy of the State, and as such subject to repeal and alteration as a law prohibiting the killing of game in certain seasons of the year. Its continuance is a matter of public policy only; and those who rely upon it must base their reliance on the free and voluntary good faith of the Legislature." See also Weler vs. Cork, 97 U. S. 542.

Such also seems to have been the real gist of the decision in U. S. vs. Realty Co., 163 U. S. 427, where the Court decided that where Congress appropriated moneys to pay

such bounties, it did not lie in the mouth of the merely executive officers of the government to invalidate the Act.

Then in the winter of 1894, when the sugar was made on the Rienzi Plantation from cane cultivated thereon during the spring and summer of that year, there was no provision of law giving a bounty therefor.

Now, to whom did the crop of 1894 made on that plantation go? Under the will of Mr. Allen and under the judgment of the Supreme Court of Louisiana, which has not only become *res adjudicata*, but which has been finally executed, the whole proceeds of the crop less the cost of producing it from the date of the death of Mr. Allen has been paid over to Bettie Allen, his widow and executrix, and the plaintiff in error in No. 168. See p. 54 of Transcript for judgment of District Court, and p. 132 for judgment of Supreme Court affirming that part.

This decision was based on the expression of the will to be found at p. 63 of the transcript:

"As I fear property will be very low, I give my executors five years to work for a good price; in the meantime that they are waiting to sell, the place can be rented or worked so as to pay all taxes and other charges, any over that to go to Mrs. Bettie Allen's credit."

Now, then, in 1895, on the 2d of March, the Congress passed a bill to pay a bounty upon sugars made in the United States during the year 1894.

This Act reads as follows:

"That there shall be paid *to those producers* who complied with the provisions of the bounty law as contained in Schedule E of the tariff act of October 1, 1890, by filing a notice of application for license and bond therein required, prior to July 1, 1894, and who would have been entitled to receive a license as provided for in said act, a bounty of

eight-tenths of a cent a pound on the *sugar actually manufactured and produced* in the United States, testing not less than eighty degrees by the polariscope, from beets, sorghum or sugar cane, grown or produced within the United States during that part of the fiscal year ending June 30, 1895, comprised in the period commencing August 28, 1894, and ending June 30, 1895, both days inclusive; and for this purpose the sum of $5,000,000, or so much thereof as may be necessary, is hereby appropriated; provided, that no bounty shall be paid to any person engaged in refining sugars which have been imported into the United States, produced in the United States, upon which the bounty herein provided has already been paid or applied for." (Italics, of course, ours.)

Under this law and the facts, as stated, the Supreme Court of Louisiana decided, on the final hearing of this case, that the bounty given by the United States for that crop should be divided into two parts—one-half to go to Mrs. Allen, as the owner of one-half of the plantation, and the other half to go to the other legatees of the other half.

In this we contend there was error.

The Supreme Court of Louisiana seems to have based the decision on the fact that up to his death Mr. Allen had paid a large part of the expenses, a part which the Court estimates at about one-half of the cost of production, and that the other half was paid by Mrs. Allen under the provision of the will which required the cost of the crop to be taken out of it, and then the remainder paid over to her.

Suppose this to be the fact, and we will not contend against it, what, we ask, has that to do with the fact of production of sugar? The bounty is granted not to the producer of cane, but to the producer of sugar made from cane produced or grown in the United States. Now, it is true, Mr. Allen paid a large part of the expense of the

cultivation, but did he produce one pound of the sugar? The evidence shows he died in September, 1894, and the making the crop (we mean the manufacture of the sugar) only began in the latter part of October, 1894.

Who then produced this crop of sugar? What is a producer or manufacturer? To produce is defined to be "the bringing into form or shape, especially for commercial purposes, manufacture, make, as to produce clothing." *Standard Dictionary.*

Literally speaking, it might be said that the real producer is only he who does the actual work of production. But in common parlance this is not so understood. It is understood to be he who furnishes the capital and the place and the means generally to shape the rough article into the article of common use. He who pays the expense. Here the whole charge was paid by Mrs. Allen. She was to receive the proceeds of the crops after paying the expenses. She did pay, and in one year, 1895, it is shown that she paid more than it came to; and the Court held her to pay this out of her pocket.

The error of the Supreme Court of Louisiana, it seems to us, lies in assuming that R. H. Allen produced any part of this crop. The Court says (p. 146):

"After deciding that to the date already mentioned the testator was the producer, etc."

This, we contend, was the error into which the Court was led, from which followed its erroneous decree. Allen did aid in producing or raising the cane, but nothing did he do towards producing or manufacturing sugar. He died before that could be done and left the whole crop, less the cost of taking it off, to his wife. In other words, he en-

tailed upon her the cost of production, which made her the producer, the manufacturer.

We contend that the whole issue here depends upon the interpretation to be placed upon the words in the law of the United States. That is, who was the producer? The State Court says it has decided that under the State law the bounty formed no part of the crop of sugar.

The decision in Delogny vs. Creditors, 48 La. An. 488, merely goes to the effect that the pledgee of the crop under the laws of this State was not entitled to receive the bounty because it really formed no part of the thing pledged.

In Webre vs. Beltran, 47 La. An. 202, the creditor of the owner of a plantation took out the license in his own name, carried on the plantation, made the sugar, and our Supreme Court decided that the bounty belonged to him up to the amount to which he was a creditor to the owner.

This case, it would seem to us, is favorable to Mrs. Allen. She made the sugar, she paid the expenses, and ought to receive the bounty, the very getting of which she paid for by paying for not only the manufacture of the sugar, but by paying the expenses of the State Bureau, gotten up for the purpose of keeping the statistics of weights and tests, so as to make the proof required by the United States Treasury Department, and which, we may here state, were kept by a former United States Internal Revenue officer, and which were, moreover, so accurately kept that the proof was accepted as good.

The Supreme Court of Louisiana decided the issue, as we have said, between the parties by saying each was owner of one-half and therefore must each receive one-half of the bounty. But while Mrs. Allen was only the owner in full

ownership of the one-half, she was the owner of the whole of the produce of the plantation. She was charged with the expense, and was to receive the net product. So stringently did the Courts of Louisiana construe this clause of the will that, as we have already said, in the case of the crop of 1895, she was forced to pay a deficit out of the profits of 1894. Now, it was perfectly legitimate for Mr. Allen to bequeath the proceeds of the plantation to the other persons, and the use or usufruct to Mrs. Allen, his wife, and so he did. The fruits go to the owner, but may go to another by contract or, as in this case, by will.

We believe that under the plain letter of the law the determination must be that Mrs. Allen, the person who paid for the production of the sugar, the cost of that production being taken out of the price coming to her, she must be held to be the producer. That this is a mere question of the interpretation of the Statute of the United States with which the State law has nothing to do.

We now proceed to answer some of the arguments made by the counsel of the other side.

We have seen that in the cases of Salt Co. vs. East Saginaw, 13 Wallace, 379, and in Welch vs. Cook, 97 U. S. 542, this Court has decided that bounties and gratuities are always within the legislative control and are not property in the sense that they may not be taken away by repeal. It is urged that there are other decisions of this Court that hold the contrary, and we have not been able to find them. The cases quoted as upholding such doctrine do not do so in our estimation.

In the case Comegys vs. Vasse, 1 Peters, 193, the question was as to the rights against certain sums paid by Spain for

wrongs done our citizens. Vasse became insolvent and he was proceeded against as an insolvent. The Court decided that the right which he had to the sum awarded by the treaty was a right of property which, under the bankrupt law, passed to his creditors. The amount was not a mere gratuity given the parties who had suffered damage, but was in the nature of a contractual payment for property.

The case of Sheppard vs. Taylor, 5 Peters, 675, is of same nature, arising under the same treaty with Spain. There again the money paid over by Spain and held by the United States, was held, not a mere gratuity but a debt, a right of property collected from Spain by our Government for the unjust capture of one of our vessels, and that on payment being made for the unjust seizure, the privilege or lien of the sailors attached to the sum paid, just as it would have done had the ship been returned.

In Emerson vs. Hall, 13 Peters, 409, which was a case in which the Congress had appropriated a sum to "be paid over to the said Beverly Chew, and the legal representatives of the said William Emerson and Edward Lorrain, respectively," the creditors of Emerson claimed the amount as necessary to pay his debts to them. The case went before this Court on a writ of error to the Supreme Court of Louisiana.

The Court says: "In the seizure and prosecution of the vessel for a violation of law, Emerson, with those who cooperated with him, rendered a meritorious service to the public. But he acted under no law, nor by virtue of any authority. And his acts imposed no obligation, either in law or equity, on the Government to compensate him for his services."

"From motives of public policy, the Government might

bestow a suitable reward on the individual in such case; but this would be a gratuity on its part. And if this reward were given to the heirs of such an individual, could it be reached by his creditors? Numerous pensions have been given by law to heirs for the military services of their ancestors, and are these pensions liable to the debts of the ancestors? Under all the provisions of this kind has it ever been supposed that the pension, though given to the legal representatives of the deceased, and on the ground of military service, should be paid to his administrators? No individual can be made a debtor against his will. Voluntary benefits may be conferred on him, which may excite his gratitude, and which, in the exercise of his generosity, he may suitably reward. But this depends on his own volition.

"A claim having no foundation in law, but depending entirely on the generosity of the Government, constitutes no basis for the action of any legal principle. It cannot be assigned. It does not go to the administrator as assets. It does not descend to the heir. And if the Government, from motives of public policy, or any other considerations, shall think proper, under such circumstances, to make a grant of money to the heirs of the claimant, they receive it as a gift or pure donation. A donation made, it is true, in reference to some meritorious act of their ancestor, but which did not constitute a matter of right against the Government."

We think this case clear on the point at issue in this case.

When Mr. Allen died, the Government recognized nothing as due to him. Indeed, as we have already said, he had as yet done nothing to earn one cent of the gratuity offered by the Government. After his death the Government did give to the producer the amount of eight-tenths of a cent bounty, and only in such cases where the proper applications had been made. By the regulations of the Department these sums were paid to administrators or executors, but this rule did not and could not give

title to the sum to those persons who merely received as trustees for the real beneficiary. To use the language of the Court: "It did not go to the administrator as assets." In the case at bar, if the Court was right in the case cited from 13 Wallace, this bounty was a mere donation, given from motives of public policy, to the producer. The sum, then, did not come into the hands of the executors *as assets*. It reached their hands under departmental regulations merely as the trustees of the producer and must be paid over to her.

We again find this question alluded to in Phelps vs. McDonald, 99 U. S. 302. There the claim was for property taken and destroyed during the great war. The decision was that the money in the treasury went to the assignees. It was not a bounty but was property returned to the owner.

The decision in Williams vs. Heard, 140 U. S. 529, is merely to same effect, that where the United States has collected money under a treaty with a foreign nation, for damages done our citizens, the right to that money passes in bankruptcy. Why? Because the money was paid over to the United States as trustee for a debt due the citizen—a property right, not a mere gratuity. Foreign powers are not presumed to make gratuitous gifts to our people.

The whole purport of the jurisprudence on this point seems to be summed up in Blagge vs. Balch, 162 U. S. 439, and the decision appears to be based on the language used in Emerson vs. Hall, 13 Peters. 409.

It is contended that the plaintiff in error, Mrs. Bettie Allen, never took possession of the Rienzi Plantation, on which the cane was produced and on which the sugar was made, and should have demanded the legacy under Article

1626 of the Civil Code of Louisiana. She was expressly exempted by her seizin from being called upon so to do. Civil Code, Art. 1628, is as follows:

"Neither is the testamentary executor, who has the seizin of the effects of the succession, and who is at the same time a legatee, bound to demand the delivery of his legacy; he can retain it in his possession subject to the same restitution."

See also Succession of Boone, 7 La. An. 127; Succession of Ames, 33 La. An. 1328.

It is argued that the end in view in the legislation of Congress in adopting the Bounty Act was the increase of the production of sugar cane. And language of the Supreme Court of Louisiana is quoted to affirm the point. Without hesitation we can say that Congress had no such view. The simple production of sugar cane could never be of benefit to the nation in any way. A few acres of the succulent grass would supply the wants of all the cane eaters. The object in view was the production of sugar for purposes not proper here to discuss. And with that view in mind, the bounty was paid for the production, not of sugar cane or beets or sorghum or maple trees, but for the production *of sugar*, the manufacture of the commercial article from the agricultural product.

But again we say, if the decision is to be based upon the law of Louisiana, we apprehend that the decision of the State Court must govern under the jurisprudence of this Court. But we do contend that the decision is not to be concluded by State law or State jurisprudence, the question is one of interpretation of a statute of the United States. What did the Congress mean when it granted a bounty to the producer? Was it to go only, as the Supreme Court of

Louisiana says, to the owner of the land upon which the cane out of which the sugar is produced is grown? If so, we have lost, for our client only owned the one-half, and the Court has given us that. Rather does it not go to the one who owned the benefit of the crop out of which the cane was made—to the person who was bound under the decision of the Court under Louisiana law to pay for the expenses of the crop—who was charged by the Court with the loss on the crop in the year 1895—under that construction forced upon it by the opponents of Mrs. Allen, urged by and insisted upon by them, and now *res adjudicata* between the parties? If she be not the producer of the crop and sugar, then who is and how? Do they pretend they expended one hour of labor thereon? Do they pretend they expended one dollar for the cultivation of the crop of cane or the manufacture of the sugar? The record bears us out in saying they did no such thing. One of the defendants in error in No. 168, Ogden Smith, one of the co-executors, was paid, as the records show, as overseer for his services on the plantation, and paid by whom? By himself out of his share of the estate? No. By the other parties now siding with him? No; but by the plaintiff in error, Mrs. Bettie Allen, who was, on his suggestion and on that of his co-claimants, forced to pay the loss incurred on the crop of 1895.

The law and the equity is with Mrs. Allen, and such we believe will be the decree of this Court.

Respectfully submitted,

CHARLTON R. BEATTIE,
TAYLOR BEATTIE,
Of Counsel.

Office Supreme Court U. S.
FILED
JAN 18 1899
JAMES H. McKENNEY,
Clerk.

No. 168.

Brief of Pierson for Mrs. Allen

SUPREME COURT OF THE UNITED STATES.

Filed Jan. 18, 1899.

MRS. BETTIE ALLEN AND W. F. COLLINS,
EXECUTORS, PLAINTIFFS IN ERROR,

versus

OGDEN SMITH, EXECUTOR, ET ALS., DEFENDANTS IN ERROR.

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SYLLABUS.

"The Sugar Bounty Act of Congress of March 2, 1895, appropriating money to pay bounties to persons who had been prevented by the repeal of the Act of 1890 from obtaining *bounties for sugar manufactured* during the year ending June 30, 1895, after filing notice of

application for license and bond under the Act of 1890, is not unconstitutional." (Our italics.) Syllabus from case of U. S. vs. Realty Co., 163 U. S. 437.

The bounty appropriated in the second clause of the sugar schedule by the Act of Congress of March 2, 1895, is predicated upon the *manufacture and production of sugar* between August 28, 1894, and June 30, 1895, inclusive.

It is not in whole or in part payable to one who only planted or cultivated a crop of *sugar cane* up to September 19, 1894, without manufacturing any portion of it into sugar.

The testator died on September 19, 1894, in Louisiana, owning a growing unmatured crop of sugar cane bequeathed to his widow, subject to the payment of "all taxes and other charges" upon it arising after his death.

The widow was recognized by the Courts in that State as the legatee by particular title and owner of the crop from the day of the testator's death, with all that pertained to the crop and in that condition it was on that day. R. C. C. 1626-1636.

Under the bequest the Courts of that State gave to her all the benefits and avails of the crop from the date of the testator's death, subject to the payment only of those "taxes and other charges" which were incurred after the testator's death.

They gave to her all that pertained to the crop, and in that condition it was in on the day the testator died, including all the expenses which he had incurred up to the day of his death.

Under the same tenure the Courts there held her, as legatee by particular title, individually liable for a deficit of $748.19, which resulted from the planting operations under the will during the year 1895.

The legal heirs, defendants in error herein, in their application to the Supreme Court of Louisiana for a rehearing (Rec. p. 139), judicially admitted the owner-

ship and possession of Mrs. Allen as legatee and therein alleged "that the gestion of (the) executors (in 1894 and 1895) *was exclusively for, and in the interest of widow Bettie Allen, particular legatee of said crops under the * * * will.*"

As such legatee by particular title, the law gives to her "*from the day of the testator's death, a right to the thing bequeathed.*" R. C. C. 1626. And it declares that: "The legacy bequeathed shall be delivered *with everything that appertains to it in the condition in which it was on the day of the donor's decease.*" R. C. C. 1636.

She being executrix with seizin under the will is considered the owner in possession, and is dispensed by law from the formality of demanding delivery from the heirs-at-law. R. C. C. 1628; Succ. Boone, 7 La. An. 128; Succ. Ames, 33 La. An. 1328.

As such legatee by particular title, she was the owner in possession of the crop of growing, unmatured sugar cane left by the decedent on his plantation on September 19, 1894, from that date.

This ownership and possession included all that appertained to the crop, and the condition it was in on September 19, 1894.

The application made by the decedent prior to his death, under the Act of Congress of October 1, 1890, for license to manufacture the crop into sugar, appertained at the time of his death to the crop itself and was a condition the crop was in at that date and as such the application for the license to manufacture it into sugar for a government bounty descended with the crop itself to her as such legatee by particular title.

The crop of sugar cane having, after the investiture of her ownership and possession, been ripened and matured; and the crop at her expense and for her exclusive account having subsequently been actually manufactured and produced into sugar between August 28, 1894, and June 30, 1895; she is thereby identified as the true

and exclusive beneficiary of the bounty fund paid therefor by the government under the Sugar Bounty Act of Congress of March 2, 1895.

As such beneficiary she is entitled, under the Act of March 2, 1895, to the entire bounty fund in controversy.

Such bounty, appropriated months after the testator's death, upon sugars manufactured after his death, did not fall into the unwilled residue of his estate.

It pertained to the crop bequeathed to the widow and passed at the testator's death with it to the widow.

As to such bounty the succession was not open in favor of the heirs-at-law, because the law excludes the legal succession and the heirs-at-law from property disposed of by last will. R. C. C. 886.

If it be considered as an accession to the crop bequeathed, it enured to the benefit of the owner of the property to which it became an accession. R. C. C. 504.

STATEMENT OF THE CASE.

Mrs. Bettie Allen, plaintiff in error in No. 168, claims here, as she claimed in the proceedings before the Courts in Louisiana, that she is the exclusive owner of the fund in controversy, viz: the sum of $11,569.35, which was paid by the United States Government in August, 1896, as a bounty on sugars manufactured in Louisiana between August 28th, 1894, and June 30th, 1895, from sugar cane grown on the Rienzi Plantation on Bayou Lafourche in that State during that period. The Government paid that sum under the provisions of the Act of Congress approved March 2, 1895, or more particularly under the second clause of the Act designated "Bounty on Sugar." See case of United States vs. Realty Co., 163 U. S. 430. The Act is as follows:

"BOUNTY ON SUGAR: That there shall be paid by the Secretary of the Treasury to those producers and manufacturers of sugar in the United States from maple sap, beets, sorghum or sugar cane grown or produced within the United States who complied with the provisions of the bounty law as contained in Schedule E of the tariff act of October first, eighteen hundred and ninety, a bounty of two cents a pound on all sugars testing not less than ninety degrees by the polariscope, and one and three-fourths cents per pound on all sugars testing less than ninety and not less than eighty degrees by the polariscope, manufactured and produced by them previous to the twenty-eighth day of August, eighteen hundred and ninety-four, and upon which no bounty has previously been paid; and for this purpose the sum of two hundred and thirty-eight thousand two hundred and eighty-nine dollars and eight cents is hereby appropriated, or so much thereof as may be necessary.

"That there shall be paid to those producers who complied with the provisions of the bounty law as contained in Schedule E of the tariff act of October first, eighteen hundred and ninety, by filing the notice of application for license and bond therein required, prior to July first, eighteen hundred and ninety-four, and who would have been entitled to receive a license as provided for in said act, a bounty of eight-tenths of a cent per pound on the sugars actually manufactured and produced in the United States testing not less than eighty degrees by the polariscope, from beets, sorghum or sugar cane grown or produced within the United States during that part of the fiscal year ending June thirtieth, eighteen hundred and ninety-five, comprised in the period commencing August twenty-eighth, eighteen hundred and ninety-four, and ending June thirtieth, eighteen hundred and ninety-five, both days inclusive; and for this purpose the sum of five million dollars, or so much thereof as may be necessary, is hereby appropriated; provided, that no bounty shall be paid to any person engaged in refining sugars which have been imported into the United States, or produced in the United

States upon which the bounty herein provided had already been paid or applied for.

"The bounty herein authorized to be paid shall be paid upon the presentation of such proofs of manufacture and production as shall be required in each case by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, and under such rules and regulations as shall be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

"And for the payment of such bounty the Secretary of the Treasury is authorized to draw warrants on the Treasurer of the United States for such sums as shall be necessary, which sums shall be certified to him by the Commissioner of Internal Revenue, by whom the bounty shall be disbursed, and no bounty shall be allowed or paid to any person as aforesaid upon any quantity of sugar less than five hundred pounds."

It will be noted that the fund was paid by the Government under the second clause of the above Act, and at the rate of 8-10 of one cent per pound "on sugars actually manufactured and produced * * * from * * * sugar cane grown or produced in the United States during that part of the fiscal year ending June 30, 1895, commencing August 30, 1884, and ending June 30, 1895."

It will also be noted that this case conforms with that class of bounty claims under this Act which was designated in the opinion rendered in the cited case (U. S. vs. Realty Co.) as the Gay case, which was there distinguished at page 432 from those claims which existed under the first clause of the Act.

It is important to bear in mind the clause of the Act to which this case belongs, because the period within which the sugar was manufactured and produced has, as we shall

find, a material bearing in determining who was the manufacturer or producer of the sugars upon which this bounty was paid. Also, it is this producer of the sugars mentioned in the Act who became the beneficiary of the Bounty Fund in controversy under the terms of the Act.

As to Mrs. Allen's Claim to the Bounty.

The plaintiff in error, Mrs. Allen, claims here as she did in the Courts in Louisiana, that she is the sole beneficiary under that Act of Congress, of this entire bounty fund, and the exclusive owner thereof; that she is the special legatee or legatee by particular title, under the olographic will of her deceased husband, under the bequest therein contained which bequeaths to her the standing unmatured crop of sugar cane on the Rienzi Plantation left by him to her at his death, on September 19th, 1894; that her title took effect on the day of his death under that bequest, and that she, being also executrix of his estate under the will with seizin, is by the law of Louisiana considered in possession of the thing bequeathed, from the day of the testator's death on which the will took effect; that at the time her ownership was vested in the crop of sugar cane it was unmatured, still standing growing in the field, and it was thereafter matured, under her ownership, and subsequently manufactured and produced into sugar for her account; in short, it was her sugar cane at the time, and it was manufactured for her account long after the death of the testator. The fact that she was the owner of the cane at the time that it was manufactured into sugars under her title as legatee, and for her account, constituted her the "manu-

facturer and producer" of the sugars made from it, within the meaning and intendment of the Act of Congress of March 2, 1895, and this fact identifies her as the sole beneficiary of the bounty under that Act, and upon this she claims that she is entitled to be recognized as the sole owner of this bounty fund paid upon the sugars so manufactured by her, and to a decree of the courts ordering that the entire sum be paid to her.

It will be seen that her ownership of the sugar cane is founded in the bequest in the will of R. H. Allen, deceased, who died at his home, on Bayou Lafourche, on September 19, 1894; and the unmatured condition of the sugar cane standing on the plantation at the date the will containing this bequest to her took effect. It will also be noted that the death of the testator occurred within a very few days after August 28, 1894, the commencement of the period under the Act, within which the sugar must have been manufactured, to entitle the party to the bounty under the Act and at a date before the testator had completely produced any cane, and before he had manufactured any sugars under that Act.

It is conceded by all parties, we believe, that his death occurred before the sugar cane matured or was in a fit condition to be manufactured into sugars. One of the defendants in error, Ogden Smith, also one of the executors under the will, was manager of the plantation for Mr. Allen in 1894, up to the time of his, Allen's death, was a witness on the stand in the District Court and testified as follows: (Rec. p. 100). Was this crop of 1894 all standing at the time Mr. Allen's death? A. Yes, sir? Q. None had been cut? A. No, sir. Q. You were the manager of the plan-

tation? A. Yes, sir. And again, (Rec. p. 101) he was asked: Q. Mr. Allen died a month before the grinding season? A. Yes, sir. But these facts are not contested, as we understand, on this trial.

As stated, the testator at his death left his olographic will with various bequests in favor of different legatees, and in which he named Ogden Smith and W. F. Collins, executors, and his wife, Mrs. Bettie Allen, executrix, of the will which was duly probated and the executors qualified on September 24, 1894. (Rec. p. 62). Ogden Smith was a legatee under the will, and also a legal heir under the law of Louisiana to the unwilled *residuum* of his estate. W. F. Collins was neither an heir nor a legatee under the will. Mrs. Bettie Allen, executrix, was his surviving widow.

Of the Mortuary Proceedings.

Ogden Smith, the executor interested as legal heir in the unwilled *residuum* of the estate, very soon disagreed in the execution of the will, with Collins executor and the executrix. Indeed, he opposed very nearly every bequest in the will except those in which the legal heirs, including himself, were interested. His disagreement with the others was of such character as to render the interpretation of the will by the Courts necessary in the proceedings to execute it.

In order to take the advice of the Court in relation to the matters in dispute between them, the executrix and Collins, Executor, joined in presenting what they denominated a Provisional Account (Rec. p. 68), which they filed in the District Court on January 24, 1895 (Rec. p. 72).

The account was accompanied with their joint petition, in which they proposed, in accordance with their views, an execution of the different bequests in the will, as well as the proper management of the estate under their administration, and including all those matters in dispute about which they deemed the advice and judicial action of the Court necessary (Rec. pp. 66 to 72). They were not, however, then ready to invoke a judicial opinion in relation to the bequest of the crop of 1894 to Mrs. Allen. At the bottom of their account they made the statement (Rec. p. 72): "The executors propose to account for the crop of 1894 as soon as the same is sold, that amount is not accounted for here." Their views and proposals in this proceeding were opposed by the executor Smith, who employed special counsel, and filed on February 5th his petition, wherein he alleges (Rec. p. 72): "That your petitioner disagreed with his co-executors in several particulars, and that he therefore files a final account, in which his co-executors do not concur." In that petition (Rec. p. 73) we find the origin of the present disputation over the ownership of the crop of 1894 at a time before the passage of the Act of Congress of March 2, 1895, appropriating the bounty which is here in dispute, and in which he alleges:

"3. That the crop on the Rienzi Plantation at the time of the death of the testator was part of the realty bequeathed, and belongs to the legatees named in the will to whom the realty is bequeathed, and this is your petitioner's construction of the will, whereas the co-executors claim that said crop belongs exclusively to Mrs. Bettie Allen."

By this it appears that originally it was not contested that the crop of 1894 was bequeathed by the will, and the issue then was whether the crop was the subject of a special

bequest exclusively to Mrs. Allen, or whether it was included in the bequest of the proceeds of the plantation, (when it should be sold) to her and the other legatees named in that bequest. (See these bequests in the will, Rec. p. 63). That fact was the issue as to the crop of 1894 upon which the case went to trial, and upon which it was afterwards heard on the appeal in the Supreme Court of Louisiana, which was decided as reported in the 48th La. An. 1045. It should be borne in mind that Executor Collins and the Executrix, in their joint account and petition, had sought to avoid at that time a dispute over the bequest of the crop to Mrs. Allen, and for the reason the crop had not then been all sold, and the design was to reduce that crop to proceeds in order that the settlement under the bequest might be the more conveniently made with her. They desired to settle the bequest in that way as the simplest form in which the matter could be adjudicated. But, it was never conceded by that arrangement that the bequest to her was limited to the net proceeds, or postponed in effect until after the sale of the crop. She was considered entitled to the net proceeds of the crop, because she was the owner of the crop under the bequest from the date of the death of the testator. It was in this sense that the Supreme Court of Louisiana in the 48th Annual, at page 1045, held that she was entitled to the net proceeds of the crops grown on the plantation pending its sale. Nor can the opinion of the Supreme Court in that case be fairly considered to mean that Mrs. Allen was not the owner of the crop of 1894, from the date of the testator's death. The issue on which that opinion was predicated did not involve any question as to the time when the bequest

of the crop to Mrs. Allen took effect. Nor did the Court there express any opinion upon that subject, but only decided the issue presented in the pleadings, and which involved the simple question whether, as contended by Executor Smith, the crop was part of the realty and passed to the two sets of legatees to whom the proceeds of the realty was bequeathed; or was it a separate bequest of the crop, apart from the realty, specially and exclusively made to Mrs. Allen separately from the other bequests? It had been proposed, as we have seen, in the account of the executrix, to defer the settlement of this question until after the crop had been sold and the taxes and other charges had been ascertained and taken from the gross proceeds of the crop, after which it was proposed to deliver the remainder to Mrs. Allen as the sole legatee of the bequest; not because it was such net proceeds that was bequeathed, but because the proceeds of the sale of the crop would represent and would be the same as the crop itself, and because the residue of the proceeds, after the taxes and other charges had been taken out, would represent the net legacy in the crop which had been bequeathed to Mrs. Allen. It was in reference to this feature of the case that the Supreme Court held that Mrs. Allen was entitled to the net proceeds of the crop of 1894, instead of those legatees of the proceeds of the realty as contended for by Executor Smith.

Aside from this, it would do violence to the language of the bequest in the will itself, to conclude that it was such net proceeds only, arising after the sale of the crop, which was bequeathed in the will; and such construction of the meaning of the Supreme Court of Louisiana would make

the views of the Court, as then expressed, inconsistent and at variance with those views subsequently expressed by the Court on the appeal subsequently taken in reference to what was the thing bequeathed, as well as in reference to the time the bequest took effect.

OF THE PROCEEDINGS UPON WHICH THE SECOND APPEAL TO THE SUPREME COURT OF LOUISIANA WAS PREDICATED.

After the rendition of the opinion by the Supreme Court, in June, 1896, the case was remanded to the District Court for further proceedings in accordance with that opinion. The proceedings in which this controversy founds its origin were inaugurated in the joint petition and final account, filed by Collins, Executor, and the Executrix, on the 18th day on August, 1896 (Rec. p. 106), in the District Court in the Parish of Lafourche (for date of filing August 18, 1896, see Rec. p. 6). In that petition they allege (Rec. p. 1):

"Petitioners aver that after the final settlement of the matters set forth in their final account and the distribution in accordance therewith, there will remain nothing for them to do further, unless at some future date the Congress of the United States should make an appropriation of monies to pay the balance of the bounty money due under Act of Congress for sugar produced on the Rienzi Plantation during the year 1894. In that event they will have the amount so paid to distribute to its legal owner, but the adjudication of the ownership of the portion of the bounty already paid will settle the matter as regards the balance due and the payment of the same when received, to its legal owner, will be a mere ministerial duty and will require no further account from petitioners."

In the final account annexed they proposed, under their view of the previous opinion of the Supreme Court, to give

Mrs. Bettie Allen the net proceeds of the crop, counting from the date of the death of the testator (Rec. p. 5). They also proposed to turn over to Mrs. Allen the $11,569.35, bounty funds, which had then been paid over by the Government. In other words, they considered the bequest of the crop to Mrs. Allen to be a separate bequest in the will to her exclusively and separate from the bequests of the proceeds of the plantation which were bequeathed, one-half to her and the other moiety to the legal heirs named in that bequest. This construction by them involved not only the ownership of the bounty money but also the proper liquidation of the costs and expenses incurred in the production, manufacture and sale of the sugar from that crop. And both these issues depended upon the construction of this bequest in the will and the date that it took effect in favor of Mrs. Allen as a legatee of the crop. Smith, Executor, opposed both these propositions in his petition and final account filed August 29, 1896, in opposition. (Rec. pp. 7 to 21). In them he contended that to find the net proceeds of the crop there should be deducted from the gross proceeds not only those expenses which were incurred after September 19, 1894, the day of the testator's death, but also that those expenses which had been incurred by the testator prior to and up to the time of his death should be deducted; whereas, Executor Collins and the Executrix proposed to pay over to her the gross proceeds with only those expenses which had been incurred after the death of the testator deducted therefrom. (See Executor Smith's account "Caption, Crops of 1894 and 1895," Rec. p. 17). In his petition (Rec. p. 8) he then explained his position in reference to the ownership of this bounty fund which was then on hand, wherein he alleged:

"Petitioner particularly opposes to give any part of the bounty money to Mrs. Bettie Allen. This money formed no part of the crop of 1894, is an unwilled asset and must be distributed among the legal heirs who have not been cut off by the will in accordance with petitioner's final account filed herewith."

As to how he proposed to distribute this bounty fund, see his final account (Rec. pp. 16 and 17). In this contention Ogden Smith was joined and expressly endorsed by the legal heirs to the estate and who are defendants in error in this proceeding, viz: by Mrs. Nellie Houchens, Ogden Smith, T. A. Smith, Gaston Smith, Fred Douglas Smith (Rec. p. 23); by John B. Turner and W. A. Turner (Rec. p. 25), and by the estate of R. H. Allen (Rec. p. 27), to which we call special attention. In this it will be observed that the rights of the defendants in error to the bounty fund in controversy is based upon the theory that it is an "*unwilled asset*" of the estate, and "must be distributed among the legal heirs * * * in accordance with petitioner's final account filed herewith." It is well to note that they found their right to this fund upon the theory that it formed an asset of the estate of R. H. Allen, deceased, who had died on September 19, 1894, and that as such it became a part of the *unwilled residuum* falling to the legal heirs not cut off therefrom by the will. On the other hand, Mrs. Allen founds her claim to this bounty fund upon the theory that it was never an asset of the estate of the deceased at all; that the crop of sugar cane standing unmatured on the plantation in the condition it was the day he died, was the asset in his estate with all that appertained to it; that it was bequeathed to her by the will with all its susceptibilities; that under her title

and possession as legatee it was subsequently matured, harvested and manufactured into sugar; and that this was the condition upon which this bounty fund was subsequently appropriated by the Act of March 2, 1895.

In that controversy, between Executor Smith and the others, there was another question in dispute relating to the effect of this bequest to Mrs. Allen. In 1895 the plantation was operated under the gestion of the executors, and there was a deficit of $748.19, excess of expenses over the revenues, in the operation of that year. Executor Smith in his account charged this deficit to Mrs. Allen, individually, which he claimed she should support as legatee under the will. (Rec. p. 18). Hence, it will be seen that in these last accounts there arose between these parties, three matters of dispute, all growing out of the effect of this bequest of the crop of 1894 to Mrs. Allen, viz:

First. Whether from the gross proceeds of the crop there should be deducted the entire expenses incurred, including those that were incurred before as well as those occurring after the death of the testator; or, should only those expenses incurred for account of the crop after the death of the testator be deducted.

Second. Whether the deficit of $748.19 arising from the planting operations of 1895 should be charged to Mrs. Allen, as legatee of the crop, or should it be charged to the general estate of the unwilled assets falling to the legal heirs.

Third. Whether Mrs. Allen, as owner of the crop of 1894 from the date of the death of the testator, is the beneficiary of the bounty fund in controversy, and should that

sum be paid to her exclusively. All these matters involved the rights of Mrs. Allen as legatee of the bequest of the crop to her, and all of them alike depend for solution upon the ascertainment of the nature and character of her right or title to the crop under the bequest. Both the District Court, as well as the Supreme Court of Louisiana, maintained that Mrs. Allen was entitled to the proceeds of the crop of 1894, after deducting those expenses only which had been incurred after the death of the testator on September 19th, and that the deficit of the crop of 1895 must be borne individually by her as legatee under the will. In relation to the net proceeds of the crop of 1894 to be paid to her, the Supreme Court then said:

"In view of the fact that the price of property was ruling low at the time he made his will, he gave them a period of five years within which to make sale of his plantation; and, further providing for the contingency of delay in effecting a sale, he authorized them to either rent or work same so as to pay all taxes and charges. And in this connection the testator declared that any over that (should) go to Mrs. Bettie Allen's credit."

"To our minds the conclusion is clear that the will contemplated and dealt with the renting or cultivation of the plantation after the death of the testator, and during such a period of time as it might remain under the administration of the executors pending sale. That as a necessary consequence the taxes and other charges to which the testator referred were those to be incurred during their incumbency; and it is therefore obvious that it was the resulting balance, after their deduction, that the testator desired his surviving widow should have.

"He contemplated that those planting operations might continue for five years; and should that have been the case she would have been entitled to the resulting balance of each year's operations. But the date at which the expenses

were to begin was evidently that at which the administration of the executors commenced; and only those incurred during their administration should be deducted from the proceeds of the crops in order to ascertain the net balance thereof, including the expense of making the sale."

In relation to the deficit resulting from the crop of 1895, the Court says:

"The foregoing argument, in our opinion, disposes of the question of the deficit on account of the crop of 1895, as it was cultivated and manufactured under the superintendence of the executors; and it necessarily followed the destination of the same provision of the will as the proceeds of the crop of 1894.

"As the crops grown on the plantation pending the sale were by the mandate of the will to be turned over to Mrs. Allen as a particular legatee, after all expenses were paid, the legal heirs must be relieved of the burdens it has occasioned.

"It follows, necessarily, that this deficit is not a charge against the unwilled portion of testator's estate; and for the same reason it is not a charge against the general estate." (Rec. pp. 132 and 135).

Under the views expressed there by the Court, in relation to these two matters, it is obvious that the cultivation of the plantation after the testator's death was for the account of Mrs. Allen subject to the charges imposed, and that the tenure for her account began when that of the deceased terminated. We also see that those charges imposed by the bequest include only those expenses which every sugar planter on his own premises has to support. She stands under this bequest in precisely the same relation as every sugar planter on his own premises stands to the crops he produces. The expenses imposed on her under this bequest are no more than those which all other planters have to support; hence, the fact that these burdens or

expenses are imposed by the bequest no more militate against her ownership of the crops under her tenure, than such expenses would operate to defeat the ownership of planters operating on their own plantations. The effect of the bequest was to place Mrs. Allen after the death of the testator until after the sale could be made, in precisely the same position and relation in the operation of the plantation, which the testator himself had occupied prior and up to the time of his death. From that time under the will she took his place. Had he lived he would have been compelled himself to support those charges which he imposed on her under this bequest. The plantation was not itself disposed of by the will, neither did it fall into the unwilled estate. He directed that his executors should sell the plantation and that the price received in money, notes, etc., should be divided in the manner directed by him among the legatees. But, from the date of the testator's death until his executors should accomplish the sale as directed, the widow was to occupy the place and stead of the testator himself, in operating the plantation. The Supreme Court so regarded and treated her, in the opinion from which we have made the foregoing quotations. Especially are we confirmed in this view when the Supreme Court held her responsible for the deficit on the crop of 1895. No grounds would exist on which to subject her to that charge as the result of the planting operations of 1895, if, as here contended by the legal heirs, her rights as legatee under the bequest are postponed until after the sale of the crop by the executors, and then vested *only* in the net proceeds resulting from such sale. Under such a construction of the bequest her rights as legatee

upon the crop would be contingent, eventual and dependent on net proceeds over expenses resulting from the sale of the crop, but such construction could not create or give rise to any obligation on her part to pay any loss which might enure from a failure of the proceeds to pay expenses.

We sum up from that opinion of the Supreme Court on these points the following result: In the first place, the Court gives Mrs. Allen, under the bequest, the crop of 1894, from September 19, 1894, including the benefit of all that the testator had expended upon it up to that date, and subject only to those expenses which had been incurred after his death; in other words, the Court treats the crop as hers and as being for her account, from the opening of the succession. In the second place, the Court held her to support the net loss incurred from planting operations of the crop of 1895, which could only have been done on the theory that the planting operations were for her account and the crop hers, with whatever burdens or benefits might result from the operations. However, the Court in that opinion decided the bounty question against Mrs. Allen, but it rested its conclusion on an error of fact as to the identity of the crop upon which the bounty had been paid. The Court was under the impression that the crop upon which the bounty money had been paid, had been manufactured *prior* to August 28, 1894, and that the payment was made under the first clause of the Act of March 2, 1895, and was for a bounty *which had been fully earned by the decedent* during his lifetime under the original Bounty Act of October 1, 1890. On this subject the Court, in its opinion, said:

"And when, in March, 1895, the second bounty act was

passed which gave to 'those producers and manufacturers of sugar who had complied with the provisions of the first bounty law a bounty of two cents a pound on all sugars manufactured and produced by them previous to the 28th of August, 1894,' the crop of 1894 had been gathered and sold.

"On this statement it seems evident that the avails of the bounty received a destination specially indicated in the Act of Congress—that is to say, to those persons who had complied fully with the provisions of the former bounty law, and *he had produced and manufactured the sugar previous to the repeal* of that law, on the 28th of August, 1894." Rec. p. 136. (Our italics.)

It is here shown that the Court founded its conclusion upon this bounty question upon the error of fact that the bounty fund in controversy had been due and paid by the Government under the first clause of the bounty schedule in the Act of March 2, 1895, for sugars which had been manufactured and produced by the decedent under the original Act of October 1, 1890, and prior to August 28, 1894, which was a date prior to the death of decedent and prior to the date at which the bequest to Mrs. Allen took effect upon the crop left by decedent. This error of fact necessarily excluded the basis upon which Mrs. Allen founds her claim to this bounty fund; which, is that the bequest to her of the growing crop of unripe sugar cane on the Rienzi Plantation took effect September 19, 1894. That the sugar cane was subsequently matured under her title as legatee and was thereafter manufactured into sugar, between August 28, 1894, and June 30, 1895, for her account, within the terms of the second clause of the Act of March 2, 1895.

In her application for a rehearing upon that opinion, Mrs. Allen called the attention of the Court to the error there

made, and predicated her right to the rehearing mainly on that ground. She therein specifically set forth the facts and the grounds of her right to this bounty fund which the Court then had denied her, and these grounds are contained in this Record on pages 141, 142, 143. The rehearing was granted her on that application. (Rec. p. 144).

The Court, in the opinion afterwards rendered on the rehearing (contained in the Record at pages 145, 146 and 147), recognized her right to the crop from September 19, 1894, and admitted that it had been subsequently matured and harvested and manufactured into sugar for her account.

In that opinion the Court said:

"To the day of the testator's death, on September 19, 1894, the plantation had been his property; the crop had been planted and cultivated by him, and all expenses to that date were paid from his funds. The value of the crop to that date he had earned. * * * In determining who was the producer it was not possible to exclude from all consideration the labor applied under the direction of the owner and the amount expended by him.

"The legatee here claiming assisted after the date just stated in producing the crop, but she was not the exclusive producer, and she, therefore, is not entitled to the whole bounty of the Government granted to the producers who produced an entire thing, a crop."

"After having decided that to the date already mentioned the testator was the producer, we applied ourselves to ascertain by whom this producer was succeeded as a producer, whether it was Mrs. Bettie Allen, as legatee, or the legal heirs. * * *

"But there are other clauses of the will which, in our view, extend her right and show that she was the producer after the death of Mr. Allen. She paid all expenses of the crop; she was to receive the proceeds under the terms of the will; *indeed, she was the owner of the crop. She can well*

be considered, as we think, the producer." (Our italics). (Rec. p. 146).

The Court here corrected the error in the original opinion into which it had then fallen, and instead of concluding that the decedent, *prior to his death, had produced a crop and manufactured the sugar therefrom*, here recognized that the testator had died before the crop of sugar cane was matured, from which the sugar was manufactured upon which this bounty was paid, and that the crop was matured and manufactured under Mrs. Allen's title as legatee after the death of the testator. But, while correcting the error of fact in the original opinion, the Court fell into another error, which is one of law, as we contend. That error is in holding that the bounty, under the second clause of the Act of March 2, 1895, is to be distributed or pro-rated between the persons who furnish the labor and expense for the planting and cultivation of *sugar cane* and the person who manufactures such sugar cane *into sugar*. It is upon this error of law that Mrs. Bettie Allen, the plaintiff in error, founded her petition and assignment of errors for the writ in this case and which she now prosecutes in this Court. But, before passing from this subject we desire to call attention of this Court to the fact that the defendants in error under Mrs. Allen's writ also applied in the Supreme Court of Louisiana for a rehearing upon the original opinion in which they *themselves judicially admitted* Mrs. Allen's possession and tenure of the crop under the will, wherein they say:

"That there is error to their prejudice, as they conceive, in that part of the final decree rendered in above entitled cause on Monday, April 12th instant, which fixes and es-

tablishes executors' commissions at the sum of seven hundred and twenty-five 39-100 dollars ($725.39), and which charges said commissions *to the mass of the estate*.

"And petitioners represent that said executors' commissions *should be charged against the crops of 1894 and 1895, respectively, and not against the general estate, for the reason that the gestion of said executors was exclusively for and in the interest of widow Bettie Allen, particular legatee of said crops* under the clause of the will, which provides that the plantation be 'worked or rented so as to pay all taxes and other charges, any over that to go to Mrs. Bettie Allen's credit.'" (Rec. p. 139).

ARGUMENT.

We insist that Mrs. Allen, under this last opinion of the Supreme Court of Louisiana, rendered upon the rehearing, was recognized by that Court as legatee by particular title, under the will, of the crop of sugar cane on the Rienzi Plantation, in that condition in which it was, on the day of the death of the testator, September 19, 1894; that she was the owner of that crop from that date; that it was subsequently matured, harvested and manufactured into sugar for her account. In this connection see her petition for the writ of error in this case (Rec. pp. 155, 156 and 157), also assignment of errors annexed (Rec. pp. 158 and 159). On the other hand, it is contended by the defendants, as heirs, that the bounty fund in controversy, as an *unwilled asset of the estate*, falls into the *unwilled residuum*, and therefore the whole bounty should be paid to and distributed among the legal heirs. We will discuss these questions in their inverse order.

THE BOUNTY FUND NOT AN ASSET OF THE ESTATE.

We cannot assent to the proposition that the deceased

testator ever had any right to, or interest in, the sugar bounty appropriated by the Act of Congress of March 2, 1895, or that the bounty fund here in controversy ever fell into his estate or became an asset thereof. We cannot assent to the proposition that any right to, or interest in, the bounty fund in controversy was ever acquired *from the deceased* by any one in any way. Confessedly, he died on September 19, 1894, before the appropriation of this bounty was made by Act of Congress on March 2, 1895. He had been paid by the Government all the bounty he had ever earned or claimed up to the time of his death. All the bounty which he had ever earned existed under the original Bounty Act of October, 1, 1890, not one cent of which was due him or claimed by him at the date of his death, and no one now claims that the Government owed him any bounty upon any sugar which he had manufactured during his lifetime.

Indeed, the Act of 1890, under which bounty had been paid him, had been repealed on August 28, 1894, prior to his death on September 19, following. Therefore, when he died there was neither bounty due him for sugars which had been manufactured by him, nor was there any bounty promised him for any sugars which should thereafter be manufactured, and he owned no sugar upon which the bounty could be claimed from the Government by or for him.

All the theories and arguments advanced in this case about any rights to this bounty fund in controversy, as being derived from him, either by hereditary title, or testamentary disposition, are without any foundation. At the time of his death he had no such rights to transmit. Death

is a temporal end of man and terminates his capacity to acquire property. He died on September 19, without having produced or manufactured a single pound of sugar between August 28, 1894, and June 30, 1895, the period under the Act of March 2, 1895, within which the sugar must have been manufactured, to entitle any one to the bounty under that Act. Confessedly, he did not so manufacture any sugar at all within that period, and that is the end of all the claims set up under him to this bounty.

Some contention has been made that this bounty accrued to his estate, as an unwilled asset, by accretion. The doctrine of accretion is not here denied, but its application to this *unwilled estate* is without foundation, for the reason that accretion is an increase or accumulation to property, or added to the property itself, which enures to the owner of such property. In this case, confessedly, the property did not remain in the succession of the deceased, but passed by the will to the legatee, by particular title, from the date of the death of the testator, and this fact precludes the possibility of accretion to such property after the opening of the succession in favor of the unwilled estate. Whatever accretions arose or enured to this property after the death of the testator was under the title of the legatee and enures to her benefit, for accretions to property cannot enure to the benefit of any other person than the owner of such property.

Aside from this, the crop in its entirety having been disposed of under the will, it could not fall into the intestate, the unwilled *residuum* of the estate. Property conveyed by valid testamentary disposition cannot be said to be property of the unwilled *residuum* of the testator's estate. As to such property the legal succession or that

portion of it falling by law to the legal heir cannot be said to be open in favor of such legal heir.

"Legal succession is that which the law has established in favor of the nearest relative of the deceased." R. C. C. 877.

"If there is no testament or institution of heir, or if the institution is null or without effect, the succession is then open in favor of the legitimate heirs, by the mere operation of the law." R. C. C. 886.

The crop of 1894 having been disposed of in its entirety by the will, it is not seen how it could fall into the legal or unwilled estate. To treat it as an unwilled asset of the estate is to deny the existence of the legacy.

Under the will the entire crop was disposed of. Whatever was over or above "the taxes and other charges" fell to Mrs. Allen under the clause, "any over that to go to Mrs. Bettie Allen's credit." There was no remainder left under the disposition to her to fall into the legal succession in favor of the heirs-at-law.

"Every legacy under a particular title gives to the legatee, from the day of the testator's death, a right to the thing bequeathed, which right may be transmitted to his heirs or assigns." R. C. C. 1626.

Therefore the heirs-at-law were cut off by the bequest to Mrs. Allen from any right to or interest in the crop of sugar cane of 1894, when the testator died.

The legal succession and the heirs-at-law being excluded, the crop with whatever pertained to it at the death of the testator passed to the legatee, and whatever accession was made to the crop by way of a bounty on sugars subsequently manufactured from it, enured to her benefit and attached to her ownership.

MRS. ALLEN'S OWNERSHIP.

Mrs. Allen does not here claim or contend that she derived her ownership and right to the bounty fund in controversy from the deceased. It was the unmatured ripening crop of sugar cane on the Rienzi Plantation that passed to her under the will on September 19, 1894. She was the owner of the sugar cane when it was matured and harvested, and when it was manufactured into sugar, and this identifies her, under the Act of March 2, 1895, as the beneficiary of the bounty paid by the Government upon the sugar which was thus manufactured from the sugar cane belonging to her which had been produced and manufactured between August 28, 1894, and June 30, 1895. But it is contended by defendants in error that the testator, prior to his death, had applied, in conformity with the provisions of the original bounty law of October 1, 1890, for a license to manufacture sugar for the fiscal year ending June 30, 1895, and to this fact we assent. But we cannot, however, assent to the proposition that such application for a license by him would entitle him to claim any bounty from the government without his having "actually manufactured and produced sugar" within the period of that fiscal year. It is not the application for a license under the original law of 1890, or the subsequent Act of March 2, 1895, that the payment of the bounty is predicated. The payment of the bounty is conditioned exclusively upon the "manufacture and production of sugar," and as he produced none during the fiscal year for which he applied for the license, it is clear that he never performed the essential requisite to support a claim even under the Act of 1890, had it not been repealed on August 28, 1894. Not only is this true, but

Mrs. Allen is entitled to it on other grounds. Article 1626 of the Civil Code of Louisiana, declares:

"Every legacy under a particular title gives to the legatee, from the day of the testator's death, a right to the thing bequeathed, which right may be transmitted to his heirs or assigns." The Article 1636 further says: "The legacy bequeathed shall be delivered *with everything that pertains to it in the condition in which it was on the day of the donor's decease.*"

Under this it is clear that the application made for the license pertained to the crop bequeathed, was a condition the crop was in, and as such passed with it to the legatee.

It is also conceded that Mrs. Allen, the legatee, by particular title, is executrix with seizin by appointment under the will, and as such she is considered in possession of the thing bequeathed from the day of testator's demise. On this subject the Civil Code, Article 1628, says: "Neither is the testamentary executor who has the seizin of the effects of the succession and who is at the same time a legatee, bound to demand the delivery of his legacy."

The settled jurisprudence of the State on this subject is that, "as testamentary executrix, she was dispensed by law from the formality of demanding the delivery from the heirs, and the District Judge was authorized to consider her in possession as owner." Succession of Boone, 7th La. An. 128; Succession of Ames, 33 La. An. 1328.

These principles of elementary law in Louisiana are not contested in this cause. They were not contested before the Courts in Louisiana. Indeed, the last opinion by the Supreme Court of that State recognized the possession of Mrs. Allen of this crop of 1894 from the death of the testator. And in this connection the Court gave to her all

the benefits arising from the crop from that date, with only those expenses to be paid out of it which were incurred after the date on which she came into possession of it, and without any reference to any expenses which had been incurred in its cultivation prior and up to that date. In other words, in effect, the Court gave to her, from September 19, 1894, under the Civil Code, Article 1636, the crop bequeathed to her, with everything that then appertained to it and in the condition it was on that day. The error of that Court in this cause was that it denied her these same privileges in reference to the bounty subsequently appropriated under the Act of March 2, 1895. The contention that the testator, prior to his death and up to September 19, 1894, had paid for all the labor and supported all the expenses in the cultivation of this crop of sugar cane, therefore became entitled to a *pro rata* share of the bounty money in controversy, denies the principle of law recognized by the Court in devoting the entire proceeds of the crop to Mrs. Allen's legacy, with only those expenses incurred after the death of the testator deducted from it. But the idea of the Court seems to have been predicated upon the language of the Act of Congress of March 2, 1895, as controlling the *pro rata* distribution of the bounty fund between the legatee and the legal heirs under his succession, and this is the error in the State Court of which she complains.

We now submit that the second clause of the Act of March 2, 1895, will not bear that construction. The Court, as we think, fell into the error by misapprehension of the word "producers" used in the first line of the second clause of that Act, namely, "that there shall be paid to those producers who applied," etc. The word "producers" here

used in the Act evidently refers to the phrase in the first clause of that Act which is, that "there shall be paid by the Secretary of the Treasury to those producers and manufacturers of sugar in the United States." Certainly, the position of the Court that the cultivator of the crop of *sugar cane* is included in the intention of the Act as a participant in the bounty bestowed, cannot be maintained, neither can the laborer be recognized as a participant in that bounty, nor can the bounty be paid except upon "*sugars actually manufactured and produced* in the United States," upon which the bounty is predicated.

As applied to the question involved in this case, the Act will read:

"There shall be paid to those producers * * * a bounty of 8-10 of a cent per pound on the sugars actually manufactured and produced in the United States from sugar cane grown or produced within the United States during that part of the fiscal year ending June 10, 1895, comprised in the period commencing Aug. 28, 1894, and ending June 30, 1895, both days inclusive."

The word "producers," used in the first part of the Act, is used in the same sense that the word "produced" is used in the phrase, "sugars manufactured and produced in the United States," and therefore the word "producers" as used in the Act means the manufacturers or producers *of sugars* as contained in the first clause of the Act. Any other construction that could be put upon this word "producers" would give the planter the right, after he had cultivated the crop of sugar cane, to a portion of the bounty, although, as a matter of fact, he had never produced or manufactured a single pound of sugar from it, and although the sugar cane produced by him had never

been actually manufactured into sugar by any other person, which would give a portion of the bounty under the Act, without reference to manufacture, a construction not admissible upon the face of the Act. But, as we have seen, the crop was bequeathed to Mrs. Allen *with all that appertained to it and in that condition it was in on the day of the testator's death*. This included the application which had been made by the testator prior to his death, for a license to manufacture it into sugar, and this fact of a compliance with the law on his part for a license appertaining to the thing bequeathed, to-wit., the crop, and on the day of his death the condition of the crop was one upon which the sugar bounty had been repealed, but upon which the application for a license to manufacture and produce sugar had been made. And that is what passed to this legatee. And this is what passed from the succession of the deceased under his will. The bounty of the Act of 1895 was earned by Mrs. Allen after his death by the manufacture of the sugar cane into sugar. And this identifies her as the beneficiary of the bounty under the Act and constitutes her the exclusive owner of the bounty fund in controversy.

As to the Writ of Error in No. 176.

We have to suggest the want of jurisdiction of this Court to issue the writ to the State Court on the application of the plaintiffs in error in No. 176, who are the defendants in error in No. 168. These parties do not claim the bounty fund in controversy under the Act of Congress of March 2, 1895, but they claim it by virtue of their inheritance from the succession of the deceased as an unwilled asset of his estate. There is no Federal question

involved in such a case, and no grounds, in our view, upon which the writ upon their application can be maintained. Under the Section No. 709, Rev. Stat. United States, when a final judgment is decreed in any suit in the highest court of a State in which a decision of the suit could be had, where any title, right or privilege or immunity is claimed, or any treaty, statute of, or commission held, or authority exercised, under the United States, and the decision is against the title, right, privilege or immunity specially set up or claimed by either party under such constitution, treaty, statute, commission or authority, may be re-examined and reversed, or affirmed in the Supreme Court, upon a writ of error. But in this case these parties expressly claimed this fund as an inheritance under the estate of a decedent in Louisiana. In this view the writ of error in No. 176 should be denied, if for no other reason than for want of jurisdiction of the Court to alter or amend the judgment of the lower court under their application.

Respectfully submitted,

J. H. Pierson
Atty for Pltff in Error
168, Defts in No 176.